

# THE STATE OF NEW HAMPSHIRE

## SUPREME COURT

**In Case No. 2007-0432, State of New Hampshire v. Guy A. Priel, the court on March 6, 2008, issued the following order:**

The defendant, Guy A. Priel, appeals an order of the trial court denying his request for pre-sentencing confinement credit for time spent released on bail under conditions requiring electronic monitoring. He argues that he should be credited 1,074 days, which includes the time he was released subject to electronic monitoring, because under the terms of his release he was a “prisoner.” We affirm.

The defendant was indicted and charged with ten counts of possession of child pornography. He was arrested and held in lieu of bail on July 2, 2004. On September 23, 2004, the defendant was released on \$5,000 cash bail, with the condition that he be placed on electronic monitoring. He later pled guilty to all charges. At the sentencing hearing, which occurred on June 12, 2007, the defendant sought pre-sentencing confinement credit for 1,074 days. The court denied the defendant’s motion and sentenced him to four to nine years in prison, with pre-sentencing confinement credit of ninety-one days. The sole issue on appeal is whether the defendant was entitled to pre-sentencing confinement credit pursuant to RSA 651:3, I, and RSA 651-A:23.

“On questions of statutory interpretation, we are the final arbiter of the intent of the legislature as expressed in the words of a statute considered as a whole. When the statute’s language is plain and unambiguous, we need not look beyond it for further indication of legislative intent.” *State v. Hammell*, 147 N.H. 313, 322 (2001) (citation omitted). RSA 651:3, I, provides that “[a]ll the time actually spent in custody prior to the time he is sentenced shall be credited in the manner set forth in RSA 651-A:23 against the maximum term of imprisonment that is imposed and against any minimum term authorized by RSA 651:2 or 6.” Additionally, RSA 651-A:23 provides, in pertinent part, “[a]ny prisoner who is confined to the state prison, any house of correction, any jail or any other place shall be granted credit against both the maximum and minimum terms of his sentence equal to the number of days during which the prisoner was confined in jail awaiting and during trial prior to the imposition of sentence and not under any sentence of confinement.”

The defendant argues that the language of the electronic monitoring contract, which stated that he was a “prisoner and subject to the provision[s] of RSA 642,” along with the fact that he was directly supervised by the Carroll County Department of Corrections, require that he be awarded pre-sentencing

confinement credit because he was “confined to . . . any other place.” Although the language of the agreement does deem him a “prisoner and subject to the provision[s] of RSA 642,” it also states that should he fail to obey all rules and regulations, he will be “taken into custody.” This indicates that the defendant was not in custody, and thus not “confined” while subject to electronic monitoring.

In State v. Duquette, 145 N.H. 374, 376 (2000), we held that “[t]he language of RSA 651:3 and RSA 651-A:23 unambiguously requires that defendants receive credit for any time awaiting sentencing while in jail.” We concluded, however, that Duquette was not “in jail” when he was on electronic monitoring. The defendant contends that the facts in this case are distinguishable. We disagree. In Duquette, we determined that although the “defendant’s liberty was restricted during the pre-sentencing period, . . . the restrictions d[id] not rise to the level of control associated with incarceration in jail.” *Id.* at 376. Similarly, in this case, although the defendant was monitored by the Carroll County Department of Corrections, the conditions imposed upon him did not approach the restrictions experienced by prisoners confined to jail. The defendant lived at home with his family, was employed outside his residence, and enjoyed greater privacy than a similarly situated offender who is unable to post bail. Additionally, the arraignment order characterized the electronic monitoring as a “condition of release,” clarifying that the defendant was being “released” upon posting \$5,000 cash bail.

Affirmed.

DUGGAN, GALWAY and HICKS, JJ., concurred.

**Eileen Fox,  
Clerk**